

Scottish
Sentencing
Council



Statutory offences of causing death by driving

Sentencing guideline

Effective from 16 January 2024

Applicability

1. This guideline applies to all offenders who are sentenced on or after 16 January 2024, and who have been convicted of one of the following offences under the Road Traffic Act 1988:

SECTION OF THE ACT	OFFENCE	PAGES
1	Causing death by dangerous driving	4-8
3A	Causing death by careless driving when under influence of drink or drugs	9-13
2B	Causing death by careless, or inconsiderate, driving	14-17
3ZB and 3ZC	Causing death by driving: unlicensed, uninsured, or disqualified drivers	18-21

How to use this guideline

2. This guideline should be read alongside the Council's guidelines '[Principles and purposes of sentencing](#)' and '[The sentencing process](#)'. It should also be read along with any other guidelines which apply to the case, or to the offender. Details of guidelines in force can be found [on the Council's website](#).
3. A court must have regard to any sentencing guidelines which are applicable to the case under consideration at the time when the court is sentencing the offender. This may result in the selected sentence falling outwith the sentencing range originally identified.
4. If a court decides not to follow an applicable guideline it must state the reasons for its decision.
5. This guideline should be used to arrive at the headline sentence for the offence under consideration. The headline sentence is the sentence selected by the court after assessing the seriousness of the offence and taking into account any aggravating and mitigating factors. These issues are covered in steps 1 to 4 of '[The sentencing process](#)' guideline.
6. The court should then take into account any other issues which apply to the case, such as any effect on the sentence of the offender pleading guilty, or time already spent in custody before sentence. These issues are covered in steps 5 to 7 of '[The sentencing process](#)' guideline.
7. The court should then decide on the sentence to be imposed. This is covered in step 8 of '[The sentencing process](#)' guideline.

Road Traffic Act 1988 section 1

Causing death by dangerous driving

Step 1: Assess the seriousness of the offence

8. The seriousness of an offence is determined by two things: the culpability of the offender and the harm caused, or which might have been caused, by the offence. As either or both culpability and harm increase, so may the seriousness of the offence. For this offence the level of harm, which is that death has been caused, has been fixed by law. The seriousness of the offence is, therefore, largely determined by the level of culpability of the offender.
9. In determining seriousness the court should consider the following table, which lists a number of features which might be present in offences of causing death by dangerous driving. This is not an exhaustive list.
10. The court should determine which level of seriousness – A, B, or C – the case before it falls into, having regard to these features, or to any other features which the court considers relevant to its assessment of seriousness.
11. In every case the court should arrive at a fair assessment of the level of seriousness, considering all of the circumstances of the offence. Where features are present from more than one level, the court should balance the relative significance of these features in arriving at a decision as to which level of seriousness the case falls into. Where multiple features from level B or C are present, that may indicate that the case should be assessed as having a higher level of seriousness.

		SERIOUSNESS		
		LEVEL A	LEVEL B	LEVEL C
NATURE OR MANNER OF DRIVING	Prolonged and deliberate course of bad or aggressive driving, with a disregard for the danger being caused to others		Driving that created a very significant risk of danger to others	Single dangerous manoeuvre, or other driving which created a significant risk of danger to others
	Racing		Aggressive driving (for example, persistent tailgating)	
			Grossly excessive speed for the road, and/or prevailing conditions, and/or the particular vehicle being driven	Excessive speed for the road, and/or prevailing conditions, and/or the particular vehicle being driven
			Repeated disregard of road signals or signs (for example, traffic lights or a 'Give Way' sign)	
CAPACITY OF DRIVER	Gross impairment through the voluntary consumption of alcohol or illegal drugs, or through the consumption of legal drugs or medication where the offender knew, or should have known, about the likelihood of impairment, or through other causes		Impairment through the voluntary consumption of alcohol or illegal drugs, or through the consumption of legal drugs or medication where the offender knew, or should have known, about the likelihood of impairment, or through other causes	Driving while knowingly deprived of rest
			Driving while avoidably distracted for a prolonged period (for example, through use of a mobile phone or similar device)	Driving while avoidably but momentarily distracted (for example, through use of a mobile phone or similar device)
			Impairment as a result of driving when knowingly suffering from a medical or physical condition, including a failure to follow medical advice or take prescribed medication	
OTHER			Ignoring warnings from others (for example, passengers)	
				Knowingly driving a vehicle which is in a dangerous state

Step 2: Select the sentencing range

12. The court should then use the following table to select the appropriate sentencing range. This is the range of sentences within which the appropriate headline sentence for the offence appears to fall, having regard to the assessment of seriousness at step 1.

	LEVEL	RANGE
SERIOUSNESS	A	7 – 12 years' custody
	B	4 – 7 years' custody
	C	2 – 5 years' custody

13. The maximum sentence provided by law for the offence of causing death by dangerous driving is imprisonment for life.
14. The offender must be disqualified from driving for a minimum period of five years, and until the extended driving test is passed. When a sentence of imprisonment or detention is imposed, the period of disqualification which the court would otherwise have imposed must be extended by a period equal to half the sentence of imprisonment or detention.¹

¹ [Road Traffic Offenders Act 1988 section 35C](#). This applies to determinate sentences (sentences for a fixed length of time). When a life sentence is imposed, the period of disqualification which the court would otherwise have imposed must be extended by a period equal to the punishment part of the life sentence.

Step 3: Identify aggravating and mitigating factors

15. The following table contains a **non-exhaustive** list of additional factual elements which may apply to the offence and the offender. The court should consider which of these factors apply, together with any other factors which, in the view of the court, aggravate or mitigate the offence or sentence. In some cases this may move the headline sentence outside the range selected at step 2.

	AGGRAVATING	MITIGATING
CONSEQUENCES	More than one person killed	
	Serious injury caused to another person or persons (excluding the driver)	Driver sustained serious injury
RECORD AND CIRCUMSTANCES OF DRIVER	Relevant previous convictions (not necessarily limited to convictions for road traffic offences)	Previous good driving record
		Deceased was family member or close friend of driver
		Remorse
		Voluntary surrender of licence (where applicable)
CIRCUMSTANCES OF OFFENCE AND ACTIONS AT THE SCENE	Other offences committed at the same time (for example, driving while disqualified or without insurance, or leaving the scene of the offence with a view to evading detection)	
	Victim was a vulnerable road user (for example, a pedestrian, cyclist, horse rider, or motorcyclist)	
	Offence committed while being pursued by the police	
		Providing assistance at the scene
		Driving in an emergency, whether in a designated emergency vehicle or otherwise

Step 4: Determine the headline sentence

16. At the end of this process, the court will have determined the headline sentence.

Road Traffic Act 1988 section 3A

Causing death by careless driving when under influence of drink or drugs

Step 1: Assess the seriousness of the offence

17. The seriousness of an offence is determined by two things: the culpability of the offender and the harm caused, or which might have been caused, by the offence. As either or both culpability and harm increase, so may the seriousness of the offence. For this offence the level of harm, which is that death has been caused, has been fixed by law. The seriousness of the offence is, therefore, largely determined by the level of culpability of the offender.
18. Culpability for this offence is generally determined by two features: the standard of driving, and the level of intoxication of the driver.
19. The standard of driving should be identified using the following table:

STANDARD OF DRIVING		
LEVEL A	LEVEL B	LEVEL C
Careless or inconsiderate driving which falls not far short of dangerous driving	Careless or inconsiderate driving which does not fall into level A or C	Careless or inconsiderate driving arising from momentary inattention

20. The level of intoxication should be identified using the following table.² Where the driver is intoxicated as a result of a combination either of alcohol and drugs, or of more than one type of drug, this may indicate that a higher level of intoxication than that originally identified should be selected for the purpose of assessing culpability.

LEVEL OF INTOXICATION		
LEVEL 1	LEVEL 2	LEVEL 3
71 µg or above alcohol in breath, high quantity of drugs, or deliberate non-provision of specimen where evidence of serious impairment	45 – 70 µg alcohol in breath, moderate quantity of drugs, or deliberate non-provision of specimen	23 – 44 µg alcohol in breath, low quantity of drugs, or test refused because of unreasonable belief

Step 2: Select the sentencing range

21. The court should then use the following table to select the appropriate sentencing range. This is the range of sentences within which the appropriate headline sentence for the offence appears to fall, having regard to the assessment of seriousness at step 1.

		STANDARD OF DRIVING		
		LEVEL A	LEVEL B	LEVEL C
LEVEL OF INTOXICATION	LEVEL 1	7 – 12 years' custody	4 – 7 years' custody	2 – 5 years' custody
	LEVEL 2	4 – 7 years' custody	2 – 5 years' custody	1 – 3 years' custody
	LEVEL 3	2 – 5 years' custody	1 – 3 years' custody	Level 2 community payback order – 18 months' custody

² The prescribed limit for driving a motor vehicle in Scotland is 22 µg of alcohol in 100 millilitres of breath, as provided for in the [Road Traffic Act 1988 s5](#) and [The Road Traffic Act 1988 \(Prescribed Limit\) \(Scotland\) Regulations 2014](#).

22. The maximum sentence provided by law for the offence of causing death by careless driving when under influence of drink or drugs is imprisonment for life.
23. The offender must be disqualified from driving for a minimum period of five years, and until the extended driving test is passed. When a sentence of imprisonment or detention is imposed, the period of disqualification which the court would otherwise have imposed must be extended by a period equal to half the sentence of imprisonment or detention.³

³ [Road Traffic Offenders Act 1988 section 35C](#). This applies to determinate sentences (sentences for a fixed length of time). When a life sentence is imposed, the period of disqualification which the court would otherwise have imposed must be extended by a period equal to the punishment part of the life sentence.

Step 3: Identify aggravating and mitigating factors

24. The following table contains a **non-exhaustive** list of additional factual elements which may apply to the offence and the offender. The court should consider which of these factors apply, together with any other factors which, in the view of the court, aggravate or mitigate the offence or sentence. In some cases this may move the headline sentence outside the range selected at step 2.

	AGGRAVATING	MITIGATING
CONSEQUENCES	More than one person killed	
	Serious injury caused to another person or persons (excluding the driver)	Driver sustained serious injury
RECORD AND CIRCUMSTANCES OF DRIVER	Relevant previous convictions (not necessarily limited to convictions for road traffic offences)	Previous good driving record
		Deceased was family member or close friend of driver
		Remorse
		Voluntary surrender of licence (where applicable)
CIRCUMSTANCES OF OFFENCE AND ACTIONS AT THE SCENE	Other offences committed at the same time (for example, driving while disqualified or without insurance, or leaving the scene of the offence with a view to evading detection)	
	Victim was a vulnerable road user (for example, a pedestrian, cyclist, horse rider, or motorcyclist)	
		Providing assistance at the scene
		The actions of the victim or someone else contributed significantly to the likelihood of a collision occurring and/or death resulting

Step 4: Determine the headline sentence

25. At the end of this process, the court will have determined the headline sentence.

Road Traffic Act 1988 section 2B

Causing death by careless, or inconsiderate, driving

Step 1: Assess the seriousness of the offence

26. The seriousness of an offence is determined by two things: the culpability of the offender and the harm caused, or which might have been caused, by the offence. As either or both culpability and harm increase, so may the seriousness of the offence. For this offence the level of harm, which is that death has been caused, has been fixed by law. The seriousness of the offence is, therefore, largely determined by the level of culpability of the offender.
27. In determining seriousness the court should consider the following table. The court should determine which level of seriousness – A, B, or C – the case before it falls into, having regard to these features, or to any other features which the court considers relevant to its assessment of seriousness.

SERIOUSNESS		
LEVEL A	LEVEL B	LEVEL C
Careless or inconsiderate driving which falls not far short of dangerous driving	Careless or inconsiderate driving which does not fall into level A or C	Careless or inconsiderate driving arising from momentary inattention

Step 2: Select the sentencing range

28. The court should then use the following table to select the appropriate sentencing range.

This is the range of sentences within which the appropriate headline sentence for the offence appears to fall, having regard to the assessment of seriousness at step 1.

	LEVEL	RANGE
SERIOUSNESS	A	Level 2 community payback order – 2 years' custody
	B	Level 2 community payback order
	C	Fine of up to £10,000 – level 2 community payback order

29. The maximum sentence provided by law for the offence of causing death by careless, or inconsiderate, driving is 5 years' imprisonment or detention.

30. The offender must be disqualified from driving for a minimum period of twelve months. When a sentence of imprisonment or detention is imposed, the period of disqualification which the court would otherwise have imposed must be extended by a period equal to half the sentence of imprisonment or detention.⁴

⁴ [Road Traffic Offenders Act 1988 section 35C](#)

Step 3: Identify aggravating and mitigating factors

31. The following table contains a **non-exhaustive** list of additional factual elements which may apply to the offence and the offender. The court should consider which of these factors apply, together with any other factors which, in the view of the court, aggravate or mitigate the offence or sentence. In some cases this may move the headline sentence outside the range selected at step 2.

	AGGRAVATING	MITIGATING
CONSEQUENCES	More than one person killed	
	Serious injury caused to another person or persons (excluding the driver)	Driver sustained serious injury
RECORD AND CIRCUMSTANCES OF DRIVER	Relevant previous convictions (not necessarily limited to convictions for road traffic offences)	Previous good driving record
		Deceased was family member or close friend of driver
		Remorse
		Voluntary surrender of licence (where applicable)
		Driving while inexperienced
CIRCUMSTANCES OF OFFENCE AND ACTIONS AT THE SCENE	Other offences committed at the same time (for example, driving while disqualified or without insurance, or leaving the scene of the offence with a view to evading detection)	
	Victim was a vulnerable road user (for example, a pedestrian, cyclist, horse rider, or motorcyclist)	
		Providing assistance at the scene
		The actions of the victim or someone else contributed to the commission of the offence
		Driving in an emergency, whether in a designated emergency vehicle or otherwise

Step 4: Determine the headline sentence

32. At the end of this process, the court will have determined the headline sentence.

Road Traffic Act 1988 sections 3ZB and 3ZC

Causing death by driving: unlicensed, uninsured, or disqualified drivers

Step 1: Assess the seriousness of the offence

33. The seriousness of an offence is determined by two things: the culpability of the offender and the harm caused, or which might have been caused, by the offence. As either or both culpability and harm increase, so may the seriousness of the offence. For these offences the level of harm, which is that death has been caused, has been fixed by law. The seriousness of these offences is, therefore, largely determined by the level of culpability of the offender, which in turn is determined by the nature of the offence.
34. In determining seriousness the court should consider the following table. The court should determine which level of seriousness – A or B – the case before it falls into, having regard to these features, or to any other features which the court considers relevant to its assessment of seriousness.

SERIOUSNESS	
LEVEL A	LEVEL B
Driving while disqualified	Driving <i>only</i> while uninsured and/or unlicensed

Step 2: Select the sentencing range

35. The court should then use the following table to select the appropriate sentencing range. This is the range of sentences within which the appropriate headline sentence for the offence appears to fall, having regard to the assessment of seriousness at step 1.

	LEVEL	RANGE
SERIOUSNESS	A	Level 2 community payback order – 2 years' custody
	B	Level 1 – level 2 community payback order

36. The maximum sentence provided by law for the offences of causing death by driving: unlicensed or uninsured drivers is 2 years' imprisonment, and the offender must be disqualified from driving for a minimum period of twelve months.
37. The maximum sentence provided by law for the offence of causing death by driving: disqualified drivers is 10 years' imprisonment, and the offender must be disqualified from driving for a minimum period of two years, and until the extended driving test is passed.
38. When a sentence of imprisonment or detention is imposed, the period of disqualification which the court would otherwise have imposed must be extended by a period equal to half the sentence of imprisonment or detention.⁵

⁵ [Road Traffic Offenders Act 1988 section 35C](#)

Step 3: Identify aggravating and mitigating factors

39. The following table contains a **non-exhaustive** list of additional factual elements which may apply to the offence and the offender. The court should consider which of these factors apply, together with any other factors which, in the view of the court, aggravate or mitigate the offence or sentence. In some cases this may move the headline sentence outside the range selected at step 2.

	AGGRAVATING	MITIGATING
CONSEQUENCES	More than one person killed	
	Serious injury caused to another person or persons (excluding the driver)	Driver sustained serious injury
RECORD AND CIRCUMSTANCES OF DRIVER	Relevant previous convictions (not necessarily limited to convictions for road traffic offences)	
		Deceased was family member or close friend of driver
		Remorse
		Voluntary surrender of licence (where applicable)
CIRCUMSTANCES OF OFFENCE AND ACTIONS AT THE SCENE	Other offences committed at the same time (for example, leaving the scene of the offence with a view to evading detection)	
	Victim was a vulnerable road user (for example, a pedestrian, cyclist, horse rider, or motorcyclist)	
		Providing assistance at the scene
		Genuine belief on the part of the driver that they were not, as the case may be, uninsured/unlicensed/disqualified from driving
		The actions of the victim or someone else contributed to the commission of the offence
		Driving in an emergency, whether in a designated emergency vehicle or otherwise

Step 4: Determine the headline sentence

40. At the end of this process, the court will have determined the headline sentence.

Scottish
Sentencing
Council



Scottish Sentencing Council
Parliament House
Parliament Square
Edinburgh
EH1 1RQ

scottishsentencingcouncil.org.uk
sentencingcouncil@scotcourts.gov.uk

© Crown copyright 2023

ISBN: 978-1-912442-49-2